

In re: Hargett, Jr. et al.
Serial No. 09/668,811
Filed: September 23, 2000
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Remarks

This is in response to the official action mailed July 31, 2003 (Paper No. 14). In the official action the Office has rejected: all of the claims under § 102(e) on the basis of Hargett 6,287,526; some of the claims under § 102(b) on the basis of Lautenschlager DE9309355; and several combinations of the claims under § 103 on the basis of various combinations of Lautenschlager, Hargett, Bennett (US 5,427,741), Broerman (US 3,426,940), Boeteers (DE 9311661) and Hargett (US 6,136,276). Several obviousness-type double-patenting rejections have also been applied, each of which includes Hargett 6,287,526. The Office has also made interrelated objections and rejections based upon the content of the drawings with respect to the claims.

In response, and in order to simplify the issues under consideration, a number of the pending claims have been cancelled so that only one independent claim (27) remains pending. A proposed drawing correction sheet is also enclosed herewith.

Hargett 6,287,526 is not Prior Art

As a first point of consideration, the Hargett '526 patent is not prior art against the pending application or its claims. More specifically, the present application is a divisional application of Serial No. 09/260,209 filed on March 1, 1999. Accordingly, it predates the June 1, 1999 filing date of the '526 patent. In particular, the March 1, 1999 effective filing date of the present application defines at least its constructive reduction to practice. Section 102(e) requires that qualifying prior art precede the date of invention. Because June 1, 1999 follows, rather than precedes March 1, 1999, the '526 patent must follow, rather than precede the date of invention of the pending claims. Therefore the '526 patent cannot qualify as § 102(e) prior art. Accordingly, Applicant submits that this grounds of rejection (e.g. Page 5 of Paper No. 14) must be removed as against all of the pending claims.

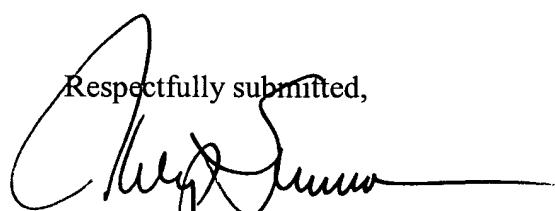
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Therefore Claims 23-26, 28-30, and 32 remain pending in the application, and Applicants submit that they are in condition for immediate allowance, and the same is respectfully requested.

The Drawing Correction

A proposed drawing correction is included herewith that shows the proposed changes marked in red ink. As set forth in their previous response, the inner walls of the cap are described at page 5 lines 9-12 of the specification as originally filed. Thus, Applicants submit that the drawing corrections avoid new matter. Applicants also submit that the drawing corrections properly address the Office's rejections under § 112.

Respectfully submitted,


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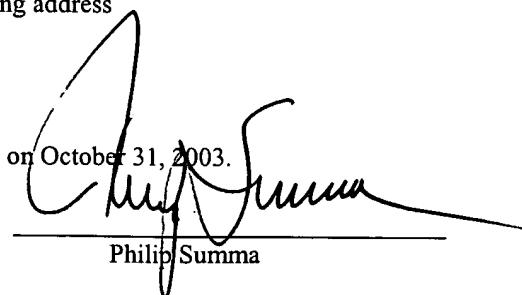
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The Office has also applied the '526 patent in a § 103 combination (e.g., Page 9 of Paper No. 14) and Applicants submit that this combination must fail once the '526 patent is removed from consideration.

By way of further explanation, it will be readily seen from an examination of the '526 patent that the construction of its cap (12) is an improvement upon the pending claims based upon the structure and function of the beveled edges of the cap and the vessel 11.

The Terminal Disclaimer is Thus Inappropriate

Given the respective filing dates, "disclaiming" the present claims with respect to No. 6,287,526 would appear to be counter-productive. Specifically, based on the March 1, 1999 effective filing date, any claims issuing from the present application will expire (assuming all maintenance fees are paid) on March 1, 2019. This is earlier than the expiration date (with the same assumption) of the '526 patent. Accordingly, Applicants submit that a disclaimer of the present application in favor of the expiration date of the '526 patent is meaningless under the circumstances.

The Amendments

As noted above, the amendments have been considered and submitted in an attempt to simplify the issues under consideration. In considering potential amendments, Applicants noted that once Hargett '526 is removed from consideration, no rejections remained against Claim 31 as pending prior to the July 31, 2003 official action. Accordingly, the recitations of Claim 31 and of Claim 27 (from which Claim 31 depends) have been added to independent Claim 23 as now pending. Applicants thus submit that Claim 23 is allowable over the prior art of record as applied to date.

Claims 27 and 31 have been cancelled now that their recitations appear in Claim 23. Additionally, independent Claim 17 and its dependent claims have been cancelled and thus the rejections brought to bear against them are now moot.